

## **Entrepreneurs' relief – disposal of trust business assets**

### **(Lecture P1123 – 13.58 minutes)**

In order for entrepreneurs' relief to be available for a disposal of business assets by trustees, the following conditions must be met (see S169J TCGA 1992):

- the trust must have an interest in possession (entrepreneurs' relief is not available for disposals by discretionary trustees);
- the disposal must be a disposal of shares in a qualifying company or of assets used for the purposes of a business; and
- a life tenant of the trust must meet the normal requirements for entrepreneurs' relief (where shares are concerned) in that, for the qualifying period, the company must have been his personal company and he must have been an officer or employee – in the case of assets used for a business, the business must have been carried on by the life tenant.

For several years, it has been thought that there was a loophole in S169J TCGA 1992, given that there was no requirement in that part of the CGT code for the life tenant to have been a qualifying beneficiary for at least a 12-month period prior to the trust disposal. If so, this opens up the possibility that a discretionary trust can convert to an interest in possession arrangement and can then 'parachute in' a suitable beneficiary for a short period during which the shares or other business assets are sold. If the life interest is subsequently revoked, this would not, it was argued, cause the trustees' 10% claim to fail.

HMRC have recently indicated that, in their opinion, this planning ploy does not work. This follows, they say, from the words of the statute that is written in terms of a qualifying beneficiary, and not simply an individual. Interestingly, HMRC have previously given advice that contradicted this position. However, they are now saying that the technical adviser who provided that guidance was wrong. A senior HMRC official confirmed that he would be asking his technical colleagues to withdraw the advice and clarify the situation. However, if and when they do that, it will surely be necessary for HMRC to specify an effective date from which the corrected interpretation would apply to trust disposals.

Another relevant aspect is that a Government Minister (the Financial Secretary to the Treasury) appeared to give the idea a green light during the Committee Stage debates on the Finance Bill which introduced entrepreneurs' relief – note the Rt Hon Jane Kennedy's comments on 13 May 2008.

The speaker cannot see that HMRC's revised stance represents a correct analysis of the statutory wording in its present form.

*Contributed by Robert Jamieson*